XI-HC-78

A.P.R.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No.1105/~~सन् 200~~ 97

(55)

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

APPELLANT: Guddu @ Parmeshwar, S/o Ajuram Jaiswal, Aged 21 years, Resident of Gedapali, Thana Bilaigarh, District Raipur (M.P.)

Versus

RESPONDENT: State of Madhya Pradesh (now Chhattisgarh), Through P.S. Bilaigarh, District Raipur (M.P.)

Present:

Smt. Usha Chandrakar, counsel for the appellant.

Shri Sudhir Bajpai, Deputy Govt. Advocate for the State/respondent.

Division Bench: - Hon'ble Shri L.C. Bhadoo & Hon'ble Shri Dhirendra Mishra, JJ.

ORAL JUDGMENT

(Delivered on 23-3-2007)

L.C. Bhadoo, J.

1. The accused/appellant has preferred this appeal questioning legality, propriety and correctness of the judgment dated 24-6-98 passed by the Additional Sessions Judge, Baloda Bazar, in S.T. No.209/93 whereby learned Additional Sessions Judge after holding the accused guilty for commission of offence under Section 302 of the I.P.C., for committing murder of Arjun Lal, sentenced him to undergo imprisonment for life & to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for 1 year.

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(56)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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2. Case of the prosecution, in brief, is that on 27-11-92 deceased Arjun Lal went to the forest to bring branches of bush, but he did not return. One day i.e. on 7-3-93 when PW-3 Mohan, elder brother of the deceased and PW-6 Neera Bai, sister of the deceased went to the forest, there they saw Baniyan, underwear, bone of the skull. They returned to their house and informed Firatram, the father. They went to the site and saw skull bone, other bones as also clothes. Firatram gave merg intimation Ex.-P/1 in the police station Bilaigarh on 8-3-93 at about 8.45 a.m. to the effect that on 27-11-92 his son went to the forest of Lamidongari to bring bush branches, thereafter he did not return. As his son used to go to Allahabad, Korba, Baloda Bazar to earn livelihood, he used to return after some time, therefore, he thought that he might have gone somewhere else to earn livelihood. However, he continued to search his son Arjun Lal. On 7-3-93, Neera, Mohan, other boys of the village saw clothes and bones in the forest. They informed him. Receiving this report, Station House Officer Police station after taking this merg intimation on record went to the forest, after giving notice Ex.-P/2 to the Panchas, prepared inquest Ex.-P/3 about the bones and clothes. From accused under Ex.-P/4 he seized one cotton Lungi and underwear. At the instance of Firatram under Ex.-P/5 he seized one green colour Lungi, stone, blood stained soil and plain soil. At the instance of Firatram under Ex.-P/6 he seized bone of the skull and hairs. From the place of occurrence under Ex.-P/7 he seized one readymade Baniyan, one underwear, 5 pieces of bone. While in the police custody, the accused gave memorandum Ex.-P/8 regarding axe, in pursuance of that he got recovered axe

P.T.O.

आदेश पत्रक (पूर्वानुबद्ध)

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under Ex.-P/11. He also gave memorandum Ex.-P/9 about the stone which was used as weapon of offence, he got recovered the same under Ex.-P/10. The bones were sent to the Medical College, Raipur under Ex.-P/13 from where report Ex.-P/14 was received. Thereafter, Dehati Nalishi Ex.-P/12 was given by the I.O., based on that case was registered.

3. After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, 1st Class, Baloda Bazar, who in turn committed the case to the Sessions Judge, Raipur from where learned Additional Sessions Judge received the case on transfer.

4. The prosecution in order to establish charge against the accused examined 14 witnesses. Statement of the accused was recorded under Section 313 Cr.P.C. in which he denied material appearing against him. He stated that he is innocent. Arjun Lal deceased was his friend. He examined Nan Bai (DW-1) in his defence.

5. Learned Additional Sessions Judge after hearing arguments of learned counsel for the respective parties, convicted and sentenced the accused as aforementioned.

6. We have heard learned counsel for the parties.

7. Conviction of the accused rests on the following circumstances:-

   (i) Testimony of PW-7 Dharman, eyewitness.

   (ii) The accused had motive to commit murder of Arjun Lal because in the night of 10-11-92 he saw something lascivious between his wife and Arjun Lal.

आदेश पत्रक (पूर्वानुबद्ध)

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(iii) The bones and clothes of the deceased were found in the forest.

(iv) Axe and stone were recovered at the instance of the accused.

8. As far as first circumstance is concerned, PW-7 Dharman has stated that deceased Arjun Lal was his maternal uncle's son. He has stated that at about 10 a.m. he was going to the forest, on the way, accused Parmeshwar met him. Both of them went to the forest together. Thereafter, he became busy in cutting bush branches. The accused demanded axe from him but he refused to accede his request. After some time, he heard cries from the side of spring. On hearing cries, he went to that side, he saw that Arjun was lying, Parmeshwar was standing there, blood was oozing from the neck of Arjun, Arjun was writhing in pain. On seeing this, he became unconscious and fell down. He regained consciousness after some time. The accused was standing near him. He inquired from the accused as to why he has committed murder of Arjun, he replied that the deceased had committed rape on his wife. He warned him not to disclose this fact to anybody otherwise he would kill him also. At that time Arjun was wearing Sandow Baniyan of blue colour. In cross-examination, he has stated that about a year back he went to the forest for cutting bush branches. He did not disclose this fact to the family members of Arjun nor he went to police to lodge the report, when the skull bone and Baniyan of the deceased were found in the forest, next day police came in the village, at that time also, he did not disclose this fact to the police. It

59

आदेश पत्रक (पूर्वानुबद्ध)

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is wrong that he did not see the accused committing murder of the deceased. Parmeshwar assaulted twice with axe. In the police statement, he informed that the accused informed him that he saw the deceased committing rape on his wife. Why that part is missing from his statement, he is not in a position to explain. After seeing the incident, he rushed towards his house. After reaching the house he went for sleep. Even he did not disclose this fact to his mother. His evidence appears to be doubtful for the following reason:--

> "it is very unusual that in spite of the fact that the deceased was in close relation to this witness, he did not disclose this fact to his maternal uncle, father of the deceased or to his family members, therefore, same cannot be believed. Even thereafter he did not disclose this fact to anyone. When the police came in the village, he did not disclose this fact to the police also. This conduct of this witness is doubtful. It has also not come on record that for the first time when did he disclose to the police that he witnessed the incident, how did police come to know that PW-7 Dharman had witnessed the incident. Therefore, evidence of this witness does not inspire confidence of the Court. No reliance can be placed on such evidence."

9. As far as motive is concerned, case of the prosecution is that on 10-11-92 the accused saw the deceased in his house. He saw

P.T.O.

आदेश पत्रक (पूर्वानुबद्ध)

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something lascivious between his wife and the deceased, therefore, the accused had motive to commit murder of the deceased. PW-2 Firatram, father of the deceased, has stated that there was Ramayan recitation at his residence on 10-11-92. Arjun left the house in the night. Chandan Singh disclosed to him that the accused has informed him that in the night of 10-11-92 Arjun entered his house. He tried to catch him but he had escaped. But Chandan Singh has not been examined by the prosecution, therefore, chain of circumstance is not complete. Moreover, this fact has not been disclosed by Firatram in the merg intimation Ex.-P/1, therefore, it is clear that the prosecution has utterly failed to establish the motive of the accused to commit crime in question.

10. As far as recovery of skull bone and clothes from the place of occurrence is concerned, PW-14 Dr. S.K. Das has stated that on 11-3-93 he was working as lecturer in the Medical College, Raipur. Skull bone was given to him for examination. After examination, he reached to the conclusion that skull bone was of a person of the age of 40-50 years. There was no injury mark on the skull. The other bones were also examined, out of those bones, only 2 bones were of human, remaining were of animals. As per the merg intimation Ex.-P/1 the age of Arjun Lal at the time of incident was 21 years, therefore, the prosecution has failed to establish the fact that skull bone which was recovered from the forest was of Arjun Lal. As far as recovery of clothes is concerned, clothes were recovered on 8-3-93 i.e. after 3 months 10 days from the forest from the open place. Therefore, based on recovery of the clothes

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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from the forest without any other circumstantial evidence, the accused cannot be connected with the crime in question.

11. As far as recovery of axe and stone at the instance of the accused is concerned, the kind of axe which was recovered at the instance of the accused is normally found in village side. There is no F.S.L. or Serologist's report to the effect that any human blood was found on the axe. Similarly, stone which was recovered at the instance of the accused, such stones are normally found in the forest area. There is no F.S.L. or serologist's report to the effect that human blood was found on the stone. Therefore, based on recovery of stone and axe, the accused cannot be connected with the crime in question.

12. For the foregoing reasons, the prosecution has utterly failed to establish that the accused was author of the crime in question i.e. author of murder of Arjun Lal, as such, finding of the trial Court convicting and sentencing the accused under Section 302 of the I.P.C. cannot be sustained.

13. In the result, the appeal succeeds. The accused is acquitted of the charge under Section 302 of the I.P.C. Consequently, conviction and sentence imposed upon the accused under Section 302 of the I.P.C. are set aside. The accused/appellant is stated to be in detention since 1993, therefore, he be set at liberty forthwith, if he is not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Barve

P.T.O.